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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/637,529	08/11/2000	Robert C. Beck	1480	8331

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EXAMINER

DESANTO, MATTHEW F

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 03/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/637,529

Applicant(s)

BECK, ROBERT C.

Examiner

Matthew F DeSanto

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-26 is/are pending in the application.
- 4a) Of the above claim(s) 15-18 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-14, 19 and 21-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Claim Objections***

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 18-29 and 30-33 have been renumbered to 11-22 and 23-26, but the claim dependency of the dependent claims needs to be fixed.

### ***Election/Restrictions***

2. Claims 15-18 and 20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No 5. The claims do not read on Figure 1, and are therefore withdrawn.

### ***Drawings***

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "19" has been used to designate both "the tubing" (line 17, page 6) and "the cap." A proposed drawing correction or corrected drawings are

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required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the catheter outside the sheath must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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6. Claims 11-14 and 19, 21-23, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Neracher (USPN: 5135482). Neracher discloses an ablation catheter having a catheter having a body and catheter body have a distal tip where the distal tip has a first maximal diameter, a sheath having a internal lumen where the lumen has a diameter substantially equal to the first diameter of the ablation catheter, and where the ablation catheter is located within the sheath and adapted for motion with respect to the sheath, whereby the ablation catheter body can be moved independently of the sheath. Neracher teaches two types of internal diameter of the sheath with the ablation catheter (column 2, lines 13-53, Figures 2, 3 and 12).

7. He also teaches a catheter body having a proximal and distal end, where the catheter body defines an axis, and the distal end having an approximately circular cross section, with a high pressure lumen in the catheter body terminating near the distal end and the annular aperture defining a first aperture defining a first aperture direction for the emerging flow that lies between approximate zero degrees and one hundred and eighty degrees, where the annular aperture cooperating with the catheter body to direct an annular sheet of fluid emerging from the aperture along the catheter body such that the distal end is substantially encircled with fluid from the aperture (Figures 2,4, and 12); as well as where a control body surface located immediate adjacent the aperture, providing a barrier located proximate the aperture, for limiting fluid entrainment from the location of the control body, near the aperture by the jet emerging from the aperture, whereby the jet is deflected by a pressure difference across the barrier,(Figures 6 and 9) and wherein a tangent drawn to the control body surface at the location of the

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aperture is parallel to the aperture direction (Figure 4) and where the tangent drawn to the control body to the aperture is greater than zero degrees, but less than ninety degrees, (Figure 10).

8. He also teaches a extraction catheter system for removing embolic material where a catheter having a catheter body having a distal end and a proximal end and having an interior and an exterior surface, a sheath having a sheath lumen adapted to receive and a guide a catheter, a fluid supply lumen in the catheter body, a fluid port connecting the fluid supply lumen with the exterior surface of the catheter body, the fluid port and the body cooperating to attach fluid ejected from the fluid port to the body, whereby the fluid ejected by the port mixes with embolic material and follows the catheter body in a retrograde direction, transporting the fluid and embolic material into the sheath lumen; wherein the catheter distal end is located outside the sheath lumen, (Figures 3, 4 and 12).

9. Claims 23, 24 and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Willard et al. (USPN 5536242). Willard et al. discloses a extraction catheter system for removing embolic material where a catheter having a catheter body having a distal end and a proximal end and having an interior and an exterior surface, a sheath having a sheath lumen adapted to receive and a guide a catheter, a fluid supply lumen in the catheter body, a fluid port connecting the fluid supply lumen with the exterior surface of the catheter body, the fluid port and the body cooperating to attach fluid ejected from the fluid port to the body, whereby the fluid ejected by the port mixes with embolic material and follows the catheter body in a retrograde direction, transporting the fluid

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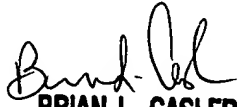
and embolic material into the sheath lumen; wherein the catheter distal end is located inside the sheath lumen (Column 6, lines 11-41, and Column 7, lines 23-62 and Figure 2A).

10. He also teaches a method of using a catheter system to remove material advancing a sheath having a sheath lumen to a location to a location near the material to be removed, advancing a catheter of the type having a fluid port to eject fluid thus creating a retrograde flow, through the sheath lumen to a location near material to be removed, injecting fluid into the catheter causing fluid to emerge from the catheter, entraining material location near the catheter, and removing the fluid and entrained flow from the sheath lumen. (Column 6, lines 11-41, Column 7, lines 23-62 and Column 13, lines 28-60).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F DeSanto whose telephone number is 1-703-305-3292. The examiner can normally be reached on Monday-Friday 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 1-703-308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are 1-703-872-9302 for regular communications and 1-703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 1-703-308-0858.

  
**BRIAN L. CASLER**  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700